



DEPARTMENT OF HEALTH AND HUMAN RESOURCES APPEALS BOARD

Susanville Indian Rancheria

Docket No. A-01-64 (IBIA Docket No. 97-89-A) (05/29/2001)

Related Indian Self-Determination Act case:

Administrative Law Judge decision, 04/06/2001

Administrative Law Judge decision, 12/14/2001

Administrative Law Judge decision on Equal Access to Justice Act claim, 08/16/2002

Administrative Law Judge decision on Equal Access to Justice Act claim, 12/09/2002



## DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Office of the Secretary

Departmental Appeals Board  
Appellate Division  
Room 637-D, HHH Building  
200 Independence Avenue, SW  
Washington, D.C. 20201

SUBJECT: Susanville Indian Rancheria  
Docket No. A-01-64  
(IBIA Docket No. 97-89-A)

DATE: May 29, 2001

### DECISION REMANDING CASE TO ADMINISTRATIVE LAW JUDGE

The Indian Health Service (IHS) and the Susanville Indian Rancheria (Tribe) both appealed the April 6, 2001 recommended decision by Administrative Law Judge (ALJ) William E. Hammett (ALJ Decision) reversing IHS's partial declination of the Tribe's proposal to renew its contract to provide health care programs, functions, services and activities under the Indian Self-Determination Act. For the reasons stated below, I remand this case to the ALJ for further development of the record and issuance of a new recommended decision.

On January 16, 1997, IHS declined to fund part of the Area Office and Headquarters shares in the Tribe's proposed annual funding agreement for 1997 based on section 102(a)(2)(D) of the Indian Self-Determination Act, which permits IHS to decline a proposal for funding "in excess of the applicable funding level for the contract, as determined under section 106(a). . . ." According to IHS, the proposed Area Office share was excessive because it included funds needed to pay for administrative functions that cannot be contracted but must be performed by the Area Office. Further, according to IHS, the proposed Headquarters share was excessive because it included funds for non-recurring costs which IHS should have distributed among tribes on a program formula basis.

The ALJ recommended that the partial declination be reversed. The ALJ found that the proposed Area Office and Headquarters shares did not exceed the funding level determined under section 106(a) and that the partial declination therefore violated section 106(b)(2) and 25 C.F.R. § 900.32, which limit the

circumstances in which funding for a subsequent year may be reduced. IHS appealed that portion of the ALJ Decision. The Tribe appealed the remedy portion of the decision, in which the ALJ found that no amount was due for the Headquarters share because IHS had already paid more than the amount proposed by the Tribe, that IHS need only pay the Tribe the amount of Area Office funds that had been declined to the extent that funds were legally available for the year in question, and that he lacked authority to assess interest on the amount owed by IHS.

During the 20-day period afforded by the regulation for my consideration of the appeals, IHS argued for the first time that the Tribe's entire appeal of the January 16, 1997 partial declination should be dismissed as moot. IHS took the position that it was no longer necessary for me to address the grounds for the partial declination considered by the ALJ since the statute requires that IHS maintain only the same level of aggregate funding from one year to the next. The parties stipulated that the Tribe experienced no reduction in its aggregate funding level from 1996 to 1997. The Tribe argued, however, that this fact was not dispositive since the Tribe was entitled to the 1996 amount for each of the subactivities in its 1997 proposal, including the Area Office and Headquarters shares.

Although I provided the maximum opportunity for the parties to brief this new issue within the constraints of the regulatory deadline for my issuance of a decision, I have determined that the record is not sufficiently developed for me to issue a sound decision. On remand, the ALJ shall take any actions necessary to fully develop the record on this issue and any other issue he deems appropriate.

The ALJ may wish to ask the parties to address the following matters relating to the new issue raised by IHS:

1. There appear to be discrepancies between the amounts of the 1996 and 1997 Area Office and Headquarters shares shown in the first chart attached to the 5/23/01 Joint Stipulation and the amounts shown in AFA #2, AFA #3, and the 1/16/97 declination letter. What are the correct amounts?
2. What is the significance of the individual line items in each group of accounting and appropriations data in AFA #2 and #3? What is the relationship between these line items and the

programs, functions, services and activities identified in the Scope of Work attached to AFA #2 and #3?

3. Were the non-recurring funds received by the Tribe for 1997 allocated for the “other Programs/Services” that are identified in ¶D of the Scope of Work attached to AFA #3, and when were the non-recurring funds received? If the non-recurring funds were allocated for programs/services other than those identified in ¶D, can they properly be considered part of the “funds provided under the terms of” the Tribe’s self-determination contract within the meaning of section 106(a)(1) of the statute?

4. What was the reason for the increase in the Tribe’s base funding from 1996 to 1997, and when was this funding increased? Should this increase also be considered part of the funds provided under the Tribe’s contract, and if so, why?

5. Is it IHS’s position that the statute as well as the regulations required the Secretary to maintain in 1997 the Tribe’s 1996 level of funding rather than its 1995 level of funding?

6. Does the plain meaning of the statute require IHS to maintain only aggregate funding in successor annual funding agreements? If so, should not the regulations be interpreted in a manner consistent with the statute’s plain meaning if at all possible?

7. Can a proposed successor annual funding agreement be considered “substantially the same as the prior annual funding agreement” within the meaning of 25 C.F.R. § 900.32 if, as shown in the chart attached to the 5/23/01 Joint Stipulation, that agreement would provide an additional \$112,204 in aggregate funding (11% increase over the prior year) and an additional \$126,958 in non-recurring funding (more than double the prior year amount)? Can a proposed successor annual funding agreement ever be considered “substantially the same” if it includes a significant amount of a type of funds that was not in the prior year’s funding agreement?

8. Is the Secretary declining a proposed successor annual funding agreement within the meaning of 25 C.F.R. § 900.32 if the Secretary agrees to provide as much in aggregate funding for the successor agreement as was provided under the prior agreement, but the amounts provided for some subactivities are lower than under the prior agreement? Would a declination have been

necessary if IHS had known by the time it was required to approve or decline the successor agreement what amount of non-recurring funding would be allocated to the Tribe?

9. How does the language of 25 C.F.R. § 900.8(h) further the position of the Tribe or IHS on the issue of whether IHS need only maintain the level of aggregate funding from year to year? Are non-recurring funds properly viewed as part of the “amount” of funds requested under section 900.8(h)? How do non-recurring funds properly fit within the “identification of the funds requested by programs, functions, services, or activities, under section 106(a) of the Act” as referenced in section 900.8(h)(1)? Does the fact that section 900.8(h) requires that a funding proposal identify a tribe’s “share of funds related to such programs, functions, services, or activities, if any, from any Departmental local, area, regional or national level” mean that IHS must issue a declination with respect to funds identified for subactivities it believes are excessive in amount even if IHS intends to maintain the aggregate amount of funding from the prior year?

10. Are there any other provisions in the regulations that are relevant here?

11. Does IHS have any policy statements or other issuances that reflect the interpretation of the statute and regulations that it argues for here?

If the ALJ determines that the new issue raised by IHS is not dispositive of the case, he may consider the additions made by the parties to the record on appeal, as well as receive new argument and evidence, in determining whether to adopt or modify the findings and conclusions with respect to any of the issues in his April 6, 2001 recommended decision. The ALJ shall also receive additional argument and evidence regarding the Tribe’s argument on appeal that it was paid only \$53,102 in Headquarters funds for 1997 since this matter must be resolved if the ALJ determines that the partial declination should be reversed on the grounds stated in his recommended decision (or I determine to reverse the partial declination on appeal).

Since this matter has been pending for more than four years, I am requesting that the ALJ consider it on an expedited basis.

//original signed  
Donald F. Garrett, Member  
Departmental Appeals Board